Division Bench

(4)

IN THE HIGH COURT OF CHHATTISGARH
AT: BILASPUR

W.P. No. 376 OF 2005

PETITIONER: 1.Prem Sagar Suryawanshi, aged 28 years, son of late Shri Samey Lal Suryawanshi,
2.Smt. Laxmin Bai, aged 48 years, wife of late Shri Samey Lal Suryawanshi,
3. Smt. Kirtan Bai Suryawanshi, aged 35 years, wife of Shri Khorbaharan Suryawanshi,
All are residents of village Parsada, Post Office Tifra, Tehsil & District Bilaspur (C.G.)

P.R. No. 343/05 Presented by Shri K.K. Jaiswal dated 27-01-05

VERSUS

RESPONDENTS: (1) State of Chhattisgarh through the Secretary, Revenue department, Raipur (Chhattisgarh)
(2) Tehsildar, Bilaspur, district Bilaspur (C.G.)
(3) Sub Divisional Officer, Bilaspur, district Bilaspur (Chhattisgarh)
(4) Board of Revenue, State of Chhattisgarh, at Bilaspur (Chhattisgarh)
(5) Sukh Sagar Suryawanshi, aged 35 years, son of late Shri Mohan Lal Suryawanshi,
(6) Bhagwat Prasad Suryawanshi, aged 48 years, son of late Shri Mohan Lal Suryawanshi,
No. 5 and 6 are residents of village Parsada, P.O. Tifra, Tehsil and district Bilaspur (Chhattisgarh)
(7) Geeta Prasad Suryawanshi, aged 38 years, son of late Shri Mohan Lal Suryawanshi, Patwari, posted at village Saragbundiya, Tehsil Champa, district Janjgir-Champa (Chhattisgarh)
(8) Smt. Chhedin Bai Suryawanshi, aged 40 years, wife of Shri Lakhan Lal Suryawanshi, resident of village Ramtala, P.O. Sendari, Tehsil and district Bilaspur (Chhattisgarh)
(9) Smt. Laxmin Bai Suryawanshi, aged 32 years, wife of Shri Ram Phal Suryawanshi, resident of village Bharari, P.O. Ranigaon, Tehsil Kota, district Bilaspur (Chhattisgarh)

RECEIVED COPY 27.1.05 Addl. G.A. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND FOR SUITABLE WRIT, ORDER, DIRECTION.

The petitioner most humbly and respectfully begs to submit as under: -

(27)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 376/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक व आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

DIVISION BENCH

HON'BLE SHRI A.K. PATNAIK, CJ.
& HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J.

02.05.2005

Heard Mr. Somnath Verma, learned counsel for the petitioners and Mr. Somesh Bajaj, learned Dy. Govt. Advocate for the State of Chhattisgarh / respondents 1 to 3.

The petitioners filed an application under Section 178 of the Chhattisgarh Land Revenue Code, 1959 (for short "the Code") for partition of holding before the Revenue Court of Tahsildar Bilaspur which was registered as Revenue Case No.5A-27/2000-2001. The Tahsildar issued notices to the respondents 5 to 9, and thereafter allowed the application for partition by an order dated 21.08.2001. Aggrieved by the said order dated 21.08.2001, respondents 5 to 9 filed an appeal before the Sub-Divisional Officer, Bilaspur which has registered as Revenue Appeal Case No.101/A-27/2002-2003 and the Sub-Divisional Officer Bilaspur held that the Tahsildar should have stayed the partition case before him for a period of three months in accordance with the proviso to Section 178 of the Code as a question of title had been raised by respondents 5 to 9 and accordingly quashed the order dated 21.08.2001 passed by the Tahsildar Bilaspur. Aggrieved, the petitioners filed an appeal before the Revenue Board at Bilaspur which is numbered as Second Appeal No.35/A-27/2004-2005, but the said appeal was also dismissed by the Revenue Board by

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XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 376/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

order dated 26.10.2004. Aggrieved, the petitioners have filed this petition under Article 226 of the Constitution of India.

Mr. Verma, learned counsel appearing for the petitioners submitted that the Revenue Board while dismissing the appeal of the petitioners have relied upon the provisions of Section 49 of the Code amended by the Chhattisgarh Land Revenue Code (Amendment) Act, 2003 by which the earlier provisions of Section 49 of the Code which enabled the appellate authority to remand the case for disposal has been done away with and it has been provided in Section 49 of the Code that no order passed by the appellate authority shall have the effect of remanding the case for disposal by any Revenue Officer subordinate to it.

Mr. Verma submitted that as a result of impugned orders passed by the Sub-Divisional Officer as well as the Revenue Board, the petitioners will not have any remedy of partition in respect of a joint holding.

We are unable to agree with Mr. Verma, learned counsel appearing for the petitioners. Section 178 of the Code is quoted herein below:

> "178. Partition of holding.- (1) If in any holding, which has been assessed for purpose of agriculture under section 59, there are more than one Bhumiswami any such Bhuminswami may apply to a Tahsildar for a partition of his share in the holding:
>
> Provided that if any question of title is raised the Tahsildar shall stay the proceeding before him for a period of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 376/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

three months to facilitate the institution of a civil suit for determination of the question of title.

(1-A) If a civil suit is filed within the period specified in the proviso to sub-section (1), and stay order is obtained from the civil court, the Tahsildar shall stay his proceedings pending the decision of the civil court. If no civil suit is filed within the said period, he shall vacate the stay order and proceed to partition the holding in accordance with the entries in the record of rights.

(2) The Tahsildar, may, after hearing the co-tenure holders, divide the holding and apportion the assessment of the holding in accordance with the rules made under this Code."

It would be clear from a plain reading of Section 178(1) of the Code quoted above that if any holding, which has been assessed for the purpose of agriculture under Section 59 of the Code there are more than one Bhumiswami any such Bhumiswami may apply to a Tahsildar for a partition of his share in the holding. But the proviso to Section 178(1) of Code makes it clear that if any question of title is raised, the Tahsildar shall stay the proceeding before him for a period of three months to facilitate institution of a civil suit for determination of the question of title. All that the Sub-Divisional Officer, Bilaspur has held in his order dated 20.09.2004 is that since a question of title has been raised, the Tahsildar should have stayed the proceeding before him for a period of three months to facilitate the institution of civil suit for determination of the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 376/05 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

question of title and since the Tahsildar has not stayed the proceeding before him for partition, although the question of title had been raised, he set aside the order dated 21.08.2001 passed by the Tahsildar but by the said order dated 20.09.2004, the Sub-Divisional Officer Bilaspur has not dismissed the application of the petitioner for partition. The result is that the application of the petitioners for partition still remains pending before the Tahsildar Bilaspur and in case a civil suit is filed within a period of three months by respondents 5 to 9 and a stay order obtained from the civil Court, the Tahsildar has to stay his proceeding pending decision by the civil Court. In case no civil Suit is filed within the said period of three months, the Tahsildar shall proceed to partition the holding in accordance with the entries in the record of rights as would be evident of sub-Section (1-A) of Section 178 of the Code.

We are thus of the view that this writ petition filed by the petitioners is misconceived and we are not inclined to interfere with the impugned orders passed by the Sub-Divisional Officer, Bilaspur and we dispose of the writ petition with the aforesaid observations.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge

GRPRJ—FS/78 —5/2006—50,000.